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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

08/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,997

Applicant(s)

FELDMANN ET AL.

Examiner

Carl D. Price

Art Unit

3749

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 and 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 03/16/2009
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims **16-19** and **21-36** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **05/01/2009**, applicant has amended the claims to include at least the following:

16. (Currently Amended)

A baking oven, comprising:

- a baking chamber;
- a baking rack insertable in said baking chamber;
- a holding part, said holding part horizontally guided in said baking chamber;
- said holding part receiving and holding said baking rack;
- said holding part and said baking rack displaceable between a baking position with said baking rack inside said baking chamber and a removed position with said baking rack located, at least in part, outside and in front of said baking chamber;
- said holding part including two **independent** retaining elements arranged on opposite side walls of said baking chamber and at a distance from at least one of the top wall and the bottom wall of said baking chamber; and each of said two **independent** retaining elements is **self-supported in a specific orientation and** guided by a displaceable carriage mounted on a **corresponding** guide rail, said guide rails affixed to said opposite side walls of said baking chamber.

In response to the prior art of record cited in the previous examiner's action and in support of the scope of the invention now presented in the amended claims, applicant argues the following:

"None of the cited prior art references, either taken alone or in combination, teaches or discloses the features of the 'retaining elements being independent, and self-supported in a specific orientation. Among other advantages, the independent and self-supporting nature of each of the retaining elements of the present invention allows the area available for the heating elements of the upper heat source and the lower heat source in the baking chamber to not be impaired by guide elements (including frame members) arranged in their vicinity. Furthermore, in relation to the presently amended dependent Claims 18 and 30, the approximately centrally arranged retaining element is subjected to a lower bending moment when a baking rack is suspended in an uppermost or a lowermost slide-in position."

In response to applicant's argument(s) directed to the prior art previously relied on, and in response to the scope of the invention now set forth in the presently amended claims, the following examiner's action now relies on the prior art reference(s) of **GB 2 196 109** and **DE 199 49 239**. Most notably, with regard to the now claimed invention, **GB 2 196 109** shows and discloses two independent retaining elements (10 or 11) which are self-supported in a specific orientation and guided by a displaceable carriage (9) mounted on a corresponding guide rail. **DE 199 49 239** shows and discloses two independent retaining elements (61, 63, 65) which are self-supported in a specific orientation and guided by a displaceable carriage (6) mounted on a corresponding guide rail

Accordingly, while applicant's arguments have been carefully considered, applicant's claims do not patentably distinguish applicant's invention over the prior art of record.

See the examiner's action herein below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims **16-19 and 21-36** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 16 and 27, it is unclear with respect to which other recited element in the claims the retaining elements are “independent”. Further in this regard, given that claim 19 requires that the retaining element “hooked rails which are fixedly connected to one another by a cross bracing”, it is further unclear in what manner the retaining elements can be thought to be “independent”.

Claim 17 is confusing. It is unclear with respect to which other recited element in the claims the guide rail are “affixed”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims Rejected under 35 U.S.C. 102(b)

Claims 16, 17 and 21-26 and are rejected under 35 U.S.C. 102(b) as being anticipated by **GB 2 196 109**.

A baking oven, comprising:
a baking chamber (1);
a baking rack (12; “roasting tray, grill or the like”) insertable in said baking chamber;
a holding part, said holding part horizontally guided in said baking chamber;
said holding part receiving and holding said baking rack;
said holding part and said baking rack displaceable between a baking position with said baking rack inside said baking chamber and a removed position with said baking rack located, at least in part, outside and in front of said baking chamber;

said holding part including two independent retaining elements arranged on opposite side walls of said baking chamber and at a distance from at least one of the top wall and the bottom wall of said baking chamber; and the holding part including two independent retaining elements (10 or 11) which are self-supported in a specific orientation and guided by a displaceable carriage (9) mounted on a corresponding guide rail (6).

FIG. 1

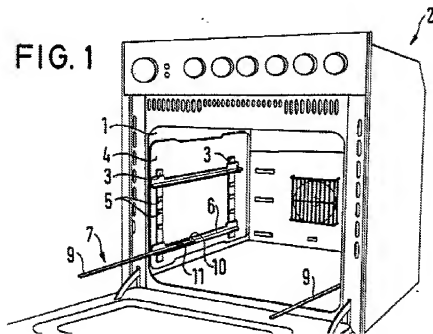


FIG. 2

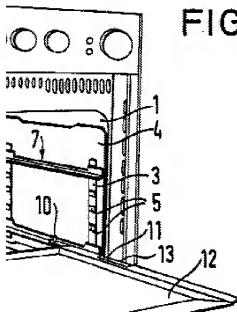
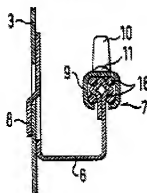
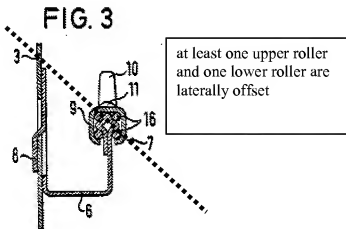


FIG. 3



In regard to claim 17, the retaining elements (7) are capable of being located at a middle height of the baking chamber, such as indicated at element (5).

In regard to claim 21-24, **GB 2 196 109** shows (figure 3) a pair of roller elements above and below the fixed rail member (7), and at least one upper roller and one lower roller are laterally offset.



In regard to claims 25 and 26, the guide rails of **GB 2 196 109** are capable of being stopped in forward and rearward positions.

Claims Rejected under 35 U.S.C. 102(b)

Claims 16, 17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by

A baking oven, comprising:

- a baking chamber (13) ;
- a baking rack(5) insertable in said baking chamber;
- a holding part, said holding part horizontally guided in said baking chamber;
- said holding part receiving and holding said baking rack;
- said holding part and said baking rack displaceable between a baking position with said baking rack inside said baking chamber and a removed position with said baking rack located, at least in part, outside and in front of said baking chamber;

the holding part including two independent retaining elements (61, 63, 65) which are self-supported in a specific orientation and guided by a displaceable carriage (6) mounted on a corresponding guide rail (4).

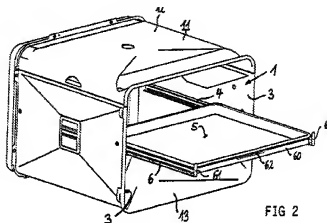


FIG 2



FIG 5

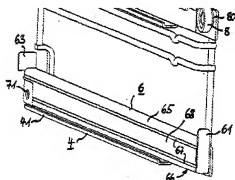


FIG 10

In regard to claim 17, the retaining elements (see figure 2) are capable of being located at a middle height of the baking chamber.

In regard to claim 21, DE 199 49 239 shows (figure 4; 20, 21) roller elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims 18, 19 and 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **GB 2 196 109** in view of **DE 2 650 372** (of record).

GB 2 196 109 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the hooked rails being coupled to one another by a cross bracing;
- the hooked rail having a plurality of grooves.

DE 2 650 372 teaches, from applicant's same oven shelf field of endeavor, selectively securing cooking trays (10) supported on hooks rails (4) having grooves (6, 9) which are coupled to one another by a cross bracing (2).

ABSTRACTED-PUB-NO: FR 2650372 A

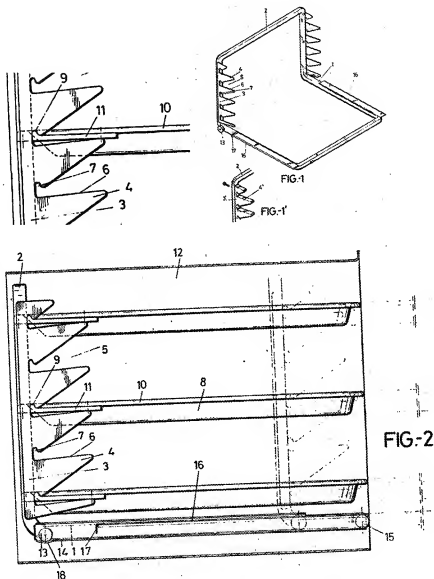
BASIC-ABSTRACT:

A kitchen oven, characterised essentially in that it consists of tray which can be displaced with the aid of guides which link suitably to the room of the oven (12).

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This tray (1, 2) has an angular form and consists in its vertical branch, with the possibility of **adjustment in height**. **One or several plates (8)** emerge on the door to the false door to leave this back branch.

USE/ADVANTAGE - It concerns a kitchen oven of the type which consist generally of an autonomous element integrating in line with the kitchen furniture.



In regard to **claims 18, 19 and 27-36**, for the purpose of providing means for permitting selective vertical height adjustment and positioning of the tray, it would have been obvious to a person having ordinary skill in the art to modify the tray supports to include hooked rails having a plurality to vertically spaced grooves to permit the use of one or more cooking trays in various

height locations, in view of the teaching of **DE 2 650 372**. In regard to claims 18, 19, 30 and 31, in particular, it would have been further obvious to affix the hooked rails along their entire length including the central portion thereof and to include a cross bracing member, in view of the teaching of **DE 2 650 372** which shows the hooked elements affixed to the rail by a structural support member (2) also extended to act as a cross bracing member.

In regard to claim 29, the retaining elements (7) are capable of being located at a middle height of the baking chamber, such as indicated at element (5).

In regard to claim 33, the guide rails of **GB 2 196 109** are capable of being stopped in forward and rearward positions.

In regard to claim 32, 34, 35, **GB 2 196 109** shows (figure 3) a pair of roller elements above and below the fixed rail member (7), and at least one upper roller and one lower roller are laterally offset.

Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl D. Price whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl D. Price/

Primary Examiner, Art Unit 3749